

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN L. CAMACHO,

Plaintiff,

- against -

Index No.: CV-09 3439

**ANSWER TO AMENDED  
COMPLAINT**

TOWN OF SOUTHAMPTON, TOWN OF SOUTHAMPTON  
POLICE DEPARTMENT, SGT. JAMES KIERNAN,  
POLICE OFFICER JOHN DOE 1, POLICE OFFICER JOHN  
DOE 2,

(Spatt, J)(MLO)

Defendants.  
-----X

Defendants, TOWN OF SOUTHAMPTON and TOWN OF SOUTHAMPTON POLICE  
DEPARTMENT, and SGT JAMES KIERNAN by their attorneys, DEVITT SPELLMAN  
BARRETT, LLP, answering plaintiff's amended complaint, respectfully respond as follows:

1. The allegations contained in paragraph numbered 1 of the amended complaint  
characterize the legal action being brought and purport to invoke the jurisdiction of this Court  
pursuant to enumerated statutes and, as such, the defendants make no answer save to demand  
strict proof thereof and to deny any conduct giving rise to any claim thereunder.

2. Deny knowledge or information sufficient to form a belief as to the allegations  
contained in paragraphs numbered 2, 9, 10, 11, 12, 13, 18, 20, 21, 22, and 23 of the amended  
complaint.

3. Deny the allegations contained in paragraphs numbered 8, 14, 15, 17, and 19 of  
the amended complaint.

4. Regarding the allegations contained in paragraph numbered 3 of the amended  
complaint, solely admit that the Town of Southampton is organized under the laws of the State of  
New York.

5. Regarding the allegations contained in paragraph numbered 4 of the amended  
complaint, solely admit that the Southampton Town Police Department is an agency within the

town of Southampton and that it is responsible for police department policy, procedure and practice, and deny the remainder of the allegations.

6. Regarding the allegations contained in paragraph numbered 5 of the amended complaint, admit that Sergeant James Kiernan is employed by the Town of Southampton and deny knowledge or information sufficient to form a belief as to the remainder of the allegations.

7. The allegations contained in paragraph numbered 6 of the amended complaint characterize the capacities of the defendants in which plaintiff desires to bring his claims, as such defendants make no answer regarding the drafting of the allegation, but deny any conduct giving rise to a claim against the Southampton Town employees in their individual capacities.

#### **FIRST CAUSE OF ACTION**

8. In response to paragraph numbered 24 of the amended complaint, defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

9. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered 25, and refer all questions of law to the Honorable Court.

10. Deny the allegations contained in paragraphs numbered 26 and 27 of the amended complaint.

#### **SECOND CAUSE OF ACTION**

11. In response to paragraph numbered 28, defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

12. Deny the allegations contained in paragraphs numbered 29 and 30 of the amended complaint.

**THIRD CAUSE OF ACTION**

13. In response to paragraph numbered 31 of the amended complaint defendants repeat, reiterate, and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

14. Deny the allegations contained in paragraphs numbered 32 and 33 of the amended complaint.

**FOURTH CAUSE OF ACTION**

15. In response to the allegations contained in paragraph numbered 34 of the amended complaint, defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

16. Deny the allegations contained in paragraphs numbered 35 and 37 of the amended complaint.

17. Deny knowledge or information to form a belief as to the allegations contained in paragraph numbered 36 of the amended complaint.

**FIFTH CAUSE OF ACTION**

18. In response to paragraph numbered 38 of the amended complaint, defendants repeat, reallege and reiterate each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

19. Deny the allegations contained in paragraphs numbered 39, 40 and 41 of the amended complaint.

**FIRST AFFIRMATIVE DEFENSE**

20. The amended complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

21. The damages sustained by the plaintiff, if any, were caused by the plaintiff's own culpable and/or negligent conduct.

**THIRD AFFIRMATIVE DEFENSE**

22. No policy, regulation or decision officially adopted and/or by defendant or otherwise ratified by defendants authorize a deprivation of the plaintiff's constitutional rights.

**FOURTH AFFIRMATIVE DEFENSE**

23. No custom or practice adopted, followed, endorsed or ratified by the defendants authorized a deprivation of plaintiff's constitutional rights.

**FIFTH AFFIRMATIVE DEFENSE**

24. The doctrines of respondeat superior and vicarious liability do not apply to a civil rights claim.

**SIXTH AFFIRMATIVE DEFENSE**

25. Municipal defendants are not liable for punitive damages.

**SEVENTH AFFIRMATIVE DEFENSE**

26. This Court lacks subject matter jurisdiction over plaintiff's claims which arise under state law.

**EIGHTH AFFIRMATIVE DEFENSE**

27. Plaintiff has failed to comply with statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

**NINTH AFFIRMATIVE DEFENSE**

28. Defendants' actions, if any, were justified by the facts and circumstances presented, to wit: a reasonable amount of force was used to effectuate plaintiff's arrest.

**TENTH AFFIRMATIVE DEFENSE**

29. Defendants' actions, if any, were justified by the facts and circumstances presented, to wit: defendants had probable cause to arrest plaintiff.

**ELEVENTH AFFIRMATIVE DEFENSE**

30. The defendants at all times acted reasonably and in good faith in the discharge of their duties and responsibilities as public officials.

31. The defendants acted solely pursuant to their duties and responsibilities as public officials.

32. The defendants reasonably believed that they were exercising and acting within their statutory and constitutional powers pursuant to federal and/or state law. In performing such responsibilities, defendants are entitled to absolute and/or qualified immunity.

**TWELFTH AFFIRMATIVE DEFENSE**

33. The allegations regarding plaintiff's § 1985 claim are vague and conclusory and therefore insufficient to establish a conspiracy claim.

**THIRTEENTH AFFIRMATIVE DEFENSE**

34. Pursuant to the intracorporate conspiracy doctrine, there can be no conspiracy between employees of the same municipal entity.

**FOURTEENTH AFFIRMATIVE DEFENSE**

35. Because plaintiff's criminal charges are still pending, his malicious prosecution claims are not ripe for adjudication.

**FIFTEENTH AFFIRMATIVE DEFENSE**

36. The TOWN OF SOUTHAMPTON POLICE DEPARTMENT is not an entity susceptible to suit.

**DEFENDANTS DEMAND A JURY TRIAL.**

WHEREFORE, defendants demand judgment against the plaintiff dismissing the complaint, together with the costs, disbursements and such other further relief as this Court shall deem just and proper.

Dated:     Smithtown, New York  
          September 15, 2009

DEVITT SPELLMAN BARRETT, LLP

By: \_\_\_\_\_  
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